

DOCUMENT RESUME

03868 - [A2773995]

[Protest of Award of any Contract for Procurement of Field Team Services]. B-188982. September 28, 1977. 4 pp.

Decision re: Field Maintenance Services Corp.; by Robert P. Keller, acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -  
Procurement & Contracts (058).

Organization Concerned: Department of the Air Force: Tinker APB,  
OK.

Authority: Freedom of Information Act (5 U.S.C. 552 et seq.  
(Supp. V)). A.S.P.R. 7-104.9(b) (vii). A.S.P.R. 1-406(c) (1i).  
B-184402 (1975).

A protester alleged that the Government did not furnish nonincumbent offerors with necessary data in contract manuals and that the incumbent had an advantage because it has submitted business data once before. Protest was denied since the matter of contract manuals is before the courts. (SS)

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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*How Brown*  
*P. 2*

FILE: 9-188983

DATE: September 28, 1977

MATTER OF: Field Maintenance Services Corporation

## DIGEST:

1. Propriety of disclosing contents of operating manuals prepared under earlier contracts is for resolution under Freedom of Information Act, 5 U.S.C. § 552 et seq. (Supp. V, 1975).
2. Protest based on competitive advantage enjoyed by incumbent contractors must fail where record indicates that basis for that advantage is prior development of operating procedures. There is nothing inherently objectionable in requiring offerors to explain their business approach to satisfying the solicitation's requirements merely because this will be less difficult for those who have performed similar, or even identical, work in the past.
3. Allegation that contracting agency should not have required security manuals because it lacks authority to approve contractors' security manuals must fail in absence of basis for concluding that contracting agency may not evaluate and monitor compliance with established security requirements.

Field Maintenance Services Corporation (FMSC) protests the award of any contract under Request for Proposals No. F34601-77-R-0971, issued by Tinker Air Force Base, Oklahoma, on the ground that the Government has not furnished non-incumbent offerors with data allegedly acquired by the Government under earlier contracts and which is necessary to the submission of competitive technical proposals.

This solicitation involves the procurement of "Field Team Services" and such materials as are necessary to perform maintenance and modification of certain weapon systems and support equipment throughout the world. The solicitation contemplates contract awards to two offerors, based on an evaluation of proposals in three principal areas, the most important being the offeror's management capability. Attachment A of the solicitation states, in part:

"MANAGEMENT CAPABILITIES

The offerors must submit sufficient detailed information concerning management capability and experience. In so doing the following data should be provided:

\* \* \* \* \*

B. Detailed and complete operating procedures (manuals) which will be implemented for each of the following areas: Quality Assurance, Production Planning and Control, Safety and Security, and Control of Costs, such as non-productive time, travel, per diem, direct labor and material acquisition (which may in turn result in potential lower costs to the Government.)"

FMSC contends that the Air Force has been furnished similar contractor operating manuals under previous contracts and has acquired unlimited rights in these manuals under Armed Services Procurement Regulation (ASPR) § 7-104.9(b)(vii), which gives the United States unlimited rights in manuals "prepared or required to be delivered" in connection with certain Government contracts. FMSC believes that, unless these allegedly Government-owned manuals are made available to all offerors, the two incumbent contractors will have a substantial advantage in preparing their technical proposals.

We understand that the propriety of turning these contractor manuals over to prospective contractors is being resolved under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. (Supp. V, 1975). A request by FMSC for the Quality Assurance Manual of one of the incumbent contractors was denied by the Air Force (except for Department of Defense Forms 48 and 49) because:

"With the exception of these Government publications [Forms 48 and 49], the Manual contains exclusively [contractor] documents that detail the business practices of [the contractor] in the performance of Air Force Field Team Contracts. The Manual is divided into four sections which contain the Standard Operating Practices, Personnel and Security Practices, Production Controls and Quality Assurance and Inspection Procedures of [the contractor]. Each section contains detailed operating instructions to [the contractor's] employees for their performance

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of field team contracts, and as such, qualifies as that type of confidential commercial information that is exempted from disclosure by 5 U.S.C. 552(b)(4). "

The Air Force has advised the protester that judicial review of its denial is available under the FOIA and, in view of the fact that the information sought by the protester appears to relate solely to the proposed manner of performance (i. e., offeror's business practices), we find no basis for concluding that disclosure of contractor manuals, prior to resolution of possible FOIA litigation, would be appropriate.

Furthermore, as we have indicated in the past, the fact that a firm may enjoy a competitive advantage by virtue of its status as an incumbent is not, in itself, grounds for objecting to a contract award to that firm. Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404. There is nothing inherently objectionable in requiring offerors to explain their business approach to satisfying the solicitation's requirements merely because this will be less difficult for those who have performed similar, or even identical, work in the past.

Finally, the protester contends:

"The U.S. Air Force has no authority to request submission of security manuals for their approval. This task is performed by the Defense Contract Administration Services District in which the contractor is located."

The Air Force advises us that the manuals required by the solicitation do not create new requirements but merely explain how the offeror's personnel will satisfy existing requirements for the handling of, in the case of security manuals, classified information. The protester provides no legal basis for its objection and we know of no reason to conclude that the Air Force is barred from requiring offerors to indicate their intended method of complying with security requirements. Furthermore, ASPR § 1-406(c)(1i) contemplates that contract administration offices will perform contract administration functions in connection with classified contracts. Under the circumstances, we conclude that the Air Force acted reasonably in requiring the submission of operating manuals for the purposes of evaluating the offerors' management capabilities and of monitoring the performance of the awardees in accordance with their proposals.

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Accordingly, the protest is denied.

*W. K. Sullivan*  
Acting Comptroller General  
of the United States